

Introduced by Senator Benoit

February 12, 2009

An act to amend Section 668 of the Harbors and Navigation Code, to amend Section 11836 of the Health and Safety Code, and to amend Section 23620 of the Vehicle Code, relating to vessels.

LEGISLATIVE COUNSEL'S DIGEST

SB 154, as introduced, Benoit. Vessels: operation of vessel.

Existing law governs the operation and equipment of vessels subject to the jurisdiction of this state. Existing law prohibits a person from operating a vessel or manipulating water skis or an aquaplane or similar device or serving as a crew member of a charter boat under the influence of an alcoholic beverage or drug. Existing law provides that if probation is granted for this violation, the court, as a condition of probation, may require the person to participate in, and successfully complete, an alcohol or drug education, training, or treatment program. A conviction of a second offense for operating a vessel under the influence of an alcoholic beverage or drug or a separate violation of vehicular manslaughter while operating a vessel within a seven-year period shall be subject to imprisonment in the county jail for not more than one year.

This bill would, instead, require, as a condition of probation, the person to participate in, and successfully complete, a licensed, alcohol or drug recovery services program in conformance with existing provisions applicable to driving under the influence motor vehicle offenses. The bill would revise the penalty provision regarding a second offense or separate violation to apply instead if that offense or violation was committed within a ten-year period.

Existing law provides that a separate offense that resulted in a conviction of a violation of vehicular manslaughter while operating a

vessel under the influence of an alcoholic beverage or drug is a separate violation for purposes of driving a vehicle while under the influence of an alcoholic beverage or drug.

This bill would further provide that this separate offense would result in a suspension or revocation of the person's driving privilege.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 668 of the Harbors and Navigation Code
2 is amended to read:

3 668. (a) ~~Any~~A person who violates subdivision (c) of Section
4 652, Section 654, 654.05, 654.06, 655.7, 658.3, 659, 673, 674, or
5 754, or any regulations adopted pursuant thereto, or any regulation
6 adopted pursuant to Section 655.3 relating to vessel equipment
7 requirements, is guilty of an infraction, punishable by a fine of not
8 more than two hundred fifty dollars (\$250).

9 (b) (1) ~~Any~~A person who violates Section 655.2, or any
10 regulation adopted pursuant thereto, or, except as provided in
11 subdivision (a), any regulation adopted pursuant to Section 655.3,
12 is guilty of a misdemeanor and shall be punished by a fine of not
13 more than one hundred dollars (\$100) or imprisonment in the
14 county jail for not more than five days, or by both that fine and
15 imprisonment, for each violation.

16 (2) ~~Any~~A person who violates subdivision (a) or (b) of Section
17 658 is guilty of a misdemeanor and shall be punished by a fine of
18 not more than two hundred dollars (\$200) for each violation.

19 (3) ~~Any~~A person who violates subdivision (d) of Section 652,
20 Section 652.5, subdivision (a) of Section 655, Section 655.05, 656,
21 or 656.1, subdivision (d) or (e) of Section 658, Section 663.6 or
22 665, or any rules and regulations adopted pursuant to subdivision
23 (b) or (c) of Section 660, is guilty of a misdemeanor and shall be
24 punished by a fine of not more than one thousand dollars (\$1,000)

1 or imprisonment in the county jail for not more than six months,
2 or by both that fine and imprisonment, for each violation.

3 (c) (1) ~~Any~~ A person convicted of a violation of Section 656.2
4 or 656.3 shall be punished by a fine of not less than one thousand
5 dollars (\$1,000) or more than ten thousand dollars (\$10,000), or
6 by imprisonment in the state prison or in the county jail for not
7 more than one year, or by both that fine and imprisonment.

8 (2) In imposing the minimum fine required by this subdivision,
9 the court shall take into consideration the defendant's ability to
10 pay the fine and, in the interest of justice for reasons stated in the
11 record, may reduce the amount of that minimum fine to less than
12 the amount otherwise required by this subdivision.

13 (d) ~~Any~~ A person convicted of a violation of Section 658.5 shall
14 be punished by a fine of not more than one hundred dollars (\$100).

15 (e) ~~Any~~ (1) A person convicted of a first violation of subdivision
16 (b), (c), (d), or (e) of Section 655, or of a violation of Section 655.4,
17 shall be punished by a fine of not more than one thousand dollars
18 (\$1,000) or imprisonment in the county jail for not more than six
19 months, or by both that fine and imprisonment. If probation is
20 granted, the court, ~~as a condition of probation, may require the~~
21 ~~person to participate in, and successfully complete, an alcohol or~~
22 ~~drug education, training, or treatment program, shall impose, as a~~
23 ~~condition of probation, a requirement that the person participate~~
24 ~~in, and successfully complete, a licensed alcohol or drug recovery~~
25 ~~services program in conformance with Section 23538 of the Vehicle~~
26 ~~Code, in addition to imposing any penalties required by this code.~~
27 ~~In order to enable all persons to participate in licensed programs,~~
28 ~~every person referred to a program licensed pursuant to Section~~
29 ~~11836 of the Health and Safety Code shall pay that program's~~
30 ~~costs commensurate with that person's ability to pay as determined~~
31 ~~by Section 11837.4 of the Health and Safety Code.~~

32 (f) ~~Any~~ A person convicted of a second or subsequent violation
33 of subdivision (b), (c), (d), or (e) of Section 655 within ~~seven~~ *ten*
34 years of the first conviction of any of those subdivisions or
35 subdivision (f) of Section 655, or any person convicted of a
36 violation of subdivision (b), (c), (d), or (e) of Section 655 within
37 ~~seven~~ *ten* years of a separate conviction of subdivision (a) or (b)
38 of Section 192.5 of the Penal Code, or a separate conviction of
39 Section 23152 or 23153 of the Vehicle Code or Section 191.5 or
40 subdivision (a) of Section 192.5 of the Penal Code, when the

1 separate conviction resulted from the operation of a motor vehicle,
2 shall be punished by a fine of not more than one thousand dollars
3 (\$1,000) or imprisonment in the county jail for not more than one
4 year, or by both that fine and imprisonment. If probation is granted,
5 the court *shall impose*, as a condition of probation, ~~may require a~~
6 *requirement that* the person ~~to~~ do either of the following, if
7 available in the county of the person's residence or employment:

8 (1) Participate, for at least 18 months subsequent to the
9 underlying conviction and in a manner satisfactory to the court,
10 in a program licensed pursuant to Chapter 9 (commencing with
11 Section 11836) of Part 2 of Division 10.5 of the Health and Safety
12 Code, as designated by the court. In order to enable all required
13 persons to participate, each person shall pay the program costs
14 commensurate with the person's ability to pay as determined
15 pursuant to Section 11837.4 of the Health and Safety Code.

16 (2) Participate, for at least 30 months subsequent to the
17 underlying conviction and in a manner satisfactory to the court,
18 in a program licensed pursuant to Chapter 9 (commencing with
19 Section 11836) of Part 2 of Division 10.5 of the Health and Safety
20 Code. A person ordered to treatment pursuant to this paragraph
21 shall apply to the court or to a board of review, as designated by
22 the court, at the conclusion of the program to obtain the court's
23 order of satisfaction. Only upon the granting of that order of
24 satisfaction by the court may the program issue its certificate of
25 successful completion. A failure to obtain an order of satisfaction
26 at the conclusion of the program is a violation of probation. In
27 order to enable all required persons to participate, each person
28 shall pay the program costs commensurate with the person's ability
29 to pay as determined pursuant to Section 11837.4 of the Health
30 and Safety Code. ~~No~~ A condition of probation required pursuant
31 to this ~~paragraph~~ *subdivision* is *not* a basis for reducing any other
32 probation requirement.

33 (g) ~~Any~~ A person convicted of a *first* violation of subdivision
34 (f) of Section 655 shall be punished by imprisonment in the state
35 prison, or in the county jail for not less than 90 days or more than
36 one year, and by a fine of not less than two hundred fifty dollars
37 (\$250) or more than five thousand dollars (\$5,000). If probation
38 is granted, the court *shall impose*, as a condition of probation, ~~may~~
39 *require a requirement that* the person ~~to~~ participate in, and
40 successfully complete, a ~~program licensed pursuant to Chapter 9~~

~~(commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, if available in the person's county of residence or employment, as designated by the court. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code licensed alcohol and drug recovery services program in conformance with Section 23556 of the Vehicle Code.~~

(h) (1) ~~If any~~ a person is convicted of a violation of subdivision (f) of Section 655 within ~~seven~~ 10 years of a separate conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than five days or more than one year and pay a fine of not less than two hundred fifty dollars (\$250) or more than five thousand dollars (\$5,000). *In addition, the court shall impose, as a condition of probation, a requirement that the person participate in, and successfully complete, a licensed alcohol and drug recovery services program in conformance with Section 23562 of the Vehicle Code.*

(2) ~~If any~~ a person is convicted of a violation of subdivision (f) of Section 655 within ~~seven~~ 10 years of a separate conviction of a violation of subdivision (f) of Section 655, of subdivision (a) or (b) of Section 192.5 of the Penal Code, or Section 23152 or 23153 of the Vehicle Code or Section 191.5 or subdivision (a) of Section 192.5 of the Penal Code, when the separate conviction resulted from the operation of a motor vehicle, and is granted probation, the court shall impose as a condition of probation that the person be confined in the county jail for not less than 90 days or more than one year, and pay a fine of not less than two hundred fifty dollars (\$250) or more than five thousand dollars (\$5,000), ~~and the~~. *In addition, the court shall impose, as a condition of probation, may order a requirement that the person participate in a manner satisfactory to the court, in a program licensed pursuant to Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code, if available in the county of the person's residence or employment. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the Health and Safety Code, and*

1 *successfully complete, a licensed alcohol and drug recovery*
2 *services program in conformance with Section 23568 of the Vehicle*
3 *Code.*

4 (i) The court shall not absolve a person who is convicted of a
5 violation of subdivision (f) of Section 655 within seven years of
6 a separate conviction of a violation of subdivision (b), (c), (d), (e),
7 or (f) of Section 655, of subdivision (a) or (b) of Section 192.5 of
8 the Penal Code, or Section 23152 or 23153 of the Vehicle Code
9 or Section 191.5 or subdivision (a) of Section 192.5 of the Penal
10 Code, when the separate conviction resulted from the operation
11 of a motor vehicle, from the minimum time in confinement
12 provided in this section and a fine of at least two hundred fifty
13 dollars (\$250), except as provided in subdivision (h).

14 ~~(j) Except in unusual cases where the interests of justice demand~~
15 ~~an exception, the~~ The court shall not strike a separate conviction
16 of an offense under subdivision (b), (c), (d), (e), or (f) of Section
17 655 or of subdivision (a) or (b) of Section 192.5 of the Penal Code,
18 or Section 23152 or 23153 of the Vehicle Code or Section 191.5
19 or subdivision (a) of Section 192.5 of the Penal Code, when the
20 separate conviction resulted from the operation of a motor vehicle,
21 for purposes of sentencing in order to avoid imposing, as part of
22 the sentence or as a term of probation, the minimum time in
23 confinement and the minimum fine, as provided in this section.
24 When a separate conviction is stricken by the court for purposes
25 of sentencing, the court shall specify the reason or reasons for the
26 striking order. On appeal by the people from an order striking a
27 separate conviction, it shall be conclusively presumed that the
28 order was made only for the reasons specified in the order, and
29 the order shall be reversed if there is no substantial basis in the
30 record for any of those reasons.

31 (k) A person who flees the scene of the crime after committing
32 a violation of Section 191.5 or paragraph (1) of subdivision (c) of
33 Section 192 of the Penal Code shall be subject to subdivision (c)
34 of Section 20001 of the Vehicle Code.

35 ~~(l) Any~~ A person who violates Section 654.3 is guilty of an
36 infraction punishable by a fine of not more than five hundred
37 dollars (\$500) for each separate violation.

38 SEC. 2. Section 11836 of the Health and Safety Code is
39 amended to read:

1 11836. (a) The department shall have the sole authority to
2 issue, deny, suspend, or revoke the license of a
3 driving-under-the-influence program. As used in this chapter,
4 “program” means any firm, partnership, association, corporation,
5 local governmental entity, agency, or place that has been initially
6 recommended by the county board of supervisors, subject to any
7 limitation imposed pursuant to subdivisions (c) and (d), and that
8 is subsequently licensed by the department to provide alcohol or
9 drug recovery services in that county to any of the following:

10 (1) A person whose license to drive has been administratively
11 suspended or revoked for, or who is convicted of, a violation of
12 Section 23152 or 23153 of the Vehicle Code, and admitted to a
13 program pursuant to Section 13352, 13352.1, 23538, 23542, 23548,
14 23552, 23556, 23562, or 23568 of the Vehicle Code.

15 (2) A person who is convicted of a violation of subdivision (b),
16 (c), (d), ~~or (e)~~, or (f) of Section 655 of the Harbors and Navigation
17 Code, or of Section 655.4 of that code, and admitted to the program
18 pursuant to Section 668 of that code.

19 (3) A person who has pled guilty or nolo contendere to a charge
20 of a violation of Section 23103 of the Vehicle Code, under the
21 conditions set forth in subdivision (c) of Section 23103.5 of the
22 Vehicle Code, and who has been admitted to the program under
23 subdivision (e) or (f) of Section 23103.5 of the Vehicle Code.

24 (4) A person whose license has been suspended, revoked, or
25 delayed due to a violation of Section 23140, and who has been
26 admitted to a program under Article 2 (commencing with Section
27 23502) of Chapter 1 of Division 11.5 of the Vehicle Code.

28 (b) If a firm, partnership, corporation, association, local
29 government entity, agency, or place has, or is applying for, more
30 than one license, the department shall treat each licensed program,
31 or each program seeking licensure, as belonging to a separate firm,
32 partnership, corporation, association, local government entity,
33 agency, or place for the purposes of this chapter.

34 (c) For purposes of providing recommendations to the
35 department pursuant to subdivision (a), a county board of
36 supervisors may limit its recommendations to those programs that
37 provide services for persons convicted of a first
38 driving-under-the-influence offense, or services to those persons
39 convicted of a second or subsequent driving-under-the-influence
40 offense, or both services. If a county board of supervisors fails to

1 provide recommendations, the department shall determine the
2 program or programs to be licensed in that county.

3 (d) After determining a need, a county board of supervisors may
4 also place one or more limitations on the services to be provided
5 by a driving-under-the-influence program or the area the program
6 may operate within the county, when it initially recommends a
7 program to the department pursuant to subdivision (a).

8 (1) For purposes of this subdivision, a board of supervisors may
9 restrict a program for those convicted of a first
10 driving-under-the-influence offense to providing only a
11 three-month program, or may restrict a program to those convicted
12 of a second or subsequent driving-under-the-influence offense to
13 providing only an 18-month program, as a condition of its
14 recommendation.

15 (2) A board of supervisors may not place restrictions on a
16 program that would violate a statute or regulation.

17 (3) When recommending a program, if a board of supervisors
18 fails to place any limitation on a program pursuant to this
19 subdivision, the department may license that program to provide
20 any driving-under-the-influence program services that are allowed
21 by law within that county.

22 (4) This subdivision is intended to apply only to the initial
23 recommendation to the department for licensure of a program by
24 the county. It is not intended to affect a license that has been
25 previously issued by the department or the renewal of a license
26 for a driving-under-the-influence program. In counties where a
27 contract or other written agreement is currently in effect between
28 the county and a licensed driving-under-the-influence program
29 operating in that county, this subdivision is not intended to alter
30 the terms of that relationship or the renewal of that relationship.

31 SEC. 3. Section 23620 of the Vehicle Code is amended to read:

32 23620. (a) For the purposes of this division, Section 13352,
33 and Chapter 12 (commencing with Section 23100) of Division 11,
34 a separate offense that resulted in a conviction of a violation of
35 subdivision (f) of Section 655 of the Harbors and Navigation Code
36 or of Section 191.5 of, or subdivision (a) of Section 192.5 of, the
37 Penal Code is a separate offense of a violation of Section 23153,
38 *and shall result in a suspension or revocation of the person's*
39 *driving privilege pursuant to paragraphs (2), (4), and (6) of*
40 *subdivision (a) of Section 13352.*

(b) For the purposes of this division and Chapter 12 (commencing with Section 23100) of Division 11, and Section 13352, a separate offense that resulted in a conviction of a violation of subdivision (b), (c), (d), or (e) of Section 655 of the Harbors and Navigation Code is a separate violation of Section 23152, *and shall result in a suspension or revocation of the person's driving privilege pursuant to paragraphs (1), (3), (5), or (7) of subdivision (a) of Section 13352 or of Section 13352.1.*

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.